

STATEMENT OF
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BEFORE THE
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

REGARDING
THE STATE OF THE INSPECTOR GENERAL COMMUNITY

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Chairman Thompson, Senator Glenn, and other Members of the Committee, I appreciate the opportunity to participate in this 20th anniversary hearing on the state of the Inspector General (IG) community. As you have requested, I will discuss the importance of the relationship between IGs and agency heads, as well as my present working relationship with the Secretary of Housing and Urban Development (HUD). I will also provide my views on changes to the IG Act proposed in S. 2167, and recommend some other changes affecting Offices of Inspector General (OIGs) that might be appropriate.

First, however, I would like to establish my credentials for discussing these issues. I have been involved in Federal IG operations for 19 years--as Director of Policy, Plans, and Programs at the Agency for International Development OIG (3 years), Assistant Inspector General then Deputy Inspector General at the General Services OIG (8 years), Chief of the Office of Management and Budget's (OMB's) Management Integrity Branch (3 years), and now Inspector General at HUD (5 years). Although I am currently in a Presidentially nominated/Senate confirmed position, I retain my status as a member of the career Senior Executive Service.

Over these years, the initially controversial IG concept has become institutionalized, and the number of IGs has grown significantly as the OIGs proved their worth. On this 20th anniversary of the IG Act, we are a community with an enviable record of serving our Government and the people of this country.

This is in large part due to the leadership, counsel, and support we have received from the Committee on Governmental Affairs. Thank you, Mr. Chairman, for moving us to look to the future. Thank you, Senator Glenn, for being with us every step of the way during the difficult years.

IGs and Agency Heads

Ideally, the relationship between an IG and the agency head is characterized by mutual respect, a common commitment to the agency mission, and a thorough understanding and acceptance of the vastly different roles of the IG and the agency head.

This type of relationship sets the tone for the agency as a whole: agency staff will tend to approach OIG findings and recommendations as opportunities for improvement, rather than gratuitous criticism; and OIG staff will be motivated to focus on finding ways to better support the agency mission, rather than nitpicking. With this type of relationship, the agency head should be comfortable asking for the OIG's views, on a formal or informal basis; and the OIG should be comfortable in knowing that those views will be respected as independent and objective assessments. In sum, this type of relationship serves the best interests of the agency by getting maximum value from OIG work.

Cultivating the ideal relationship is not easy. OIGs tend to have considerable institutional knowledge and a focus on institutional viability. Agency heads are usually in office for relatively short periods of time and therefore tend to make their marks through policy initiatives. Under these circumstances, OIG reporting may be seen as counterproductive carping.

During Secretary Cisneros' tenure, however, a constructive relationship evolved. Operation Safe Home grew out of a discussion the Secretary and I had, early in his administration, about the need for the OIG to better focus its investigative effort. The Secretary solicited and received very substantial OIG input into his plans for reinventing HUD. At the request of the Secretary, the OIG also undertook a series of major reviews of troubled public housing authorities having partnership agreements with HUD. At principal staff meetings, Secretary Cisneros would periodically ask why he got the straight story only from the OIG.

Under the present HUD Secretary, the situation is somewhat different. I believe that the Secretary and I share a common, strong commitment to HUD's mission. The Secretary, however, is uncomfortable with the concept of an independent Inspector General who is not subject to his control and who has a dual reporting responsibility, to both the Secretary and the Congress.

I believe that this hostility to the concept of an independent Inspector General has its roots in a Congressionally requested audit the OIG did in 1995. The audit was of a program under the jurisdiction of then-Assistant Secretary Cuomo. Assistant Secretary Cuomo heatedly disputed the authority of the OIG to raise certain questions, and strongly objected to what he saw as a lack of accountability on my part.

Nonetheless, on an individual basis, until the last several months, the Secretary and I frequently discussed HUD issues. And, at the very beginning of his tenure, the Secretary publicly endorsed the GAO and OIG assessments of HUD's management problems. Indeed, the Secretary's principal agenda, HUD 2020, is designed to address those same management problems. Given this, some time ago the Secretary asked me why the OIG didn't declare victory and go look at something else.

But we have continued to look at HUD 2020, because its progress is vitally important to HUD's ability to carry out its mission. Not surprisingly, given the depth and pervasiveness of management problems at HUD, we have expressed reservations about the Secretary's ability to transform HUD in the radical manner and under the abbreviated timetable he has adopted. The Secretary has characterized this as biased reporting and naysaying. His impatience with the independence of the OIG has led to a truly extraordinary series of events.

- In early April 1997, the Secretary received an anonymous letter alleging that I had targeted minorities--Native Americans, Latinos, and African Americans--and OIG operations were riddled with abuse. Key aides to the Secretary spent weeks trying to convince the Office of Management and Budget that HUD's Office of General Counsel should be authorized to investigate the allegations. When I finally got a copy of the letter in early May, I referred it to the Integrity Committee of the President's Council on Integrity and Efficiency for investigation. The Integrity Committee is the Government-wide mechanism established by executive order to deal with allegations against IGs.
- In the spring of 1997, the Acting General Counsel (a key aide to the Secretary) asserted that OIG audit reports should be issued through the Office of the Secretary; the OIG was not authorized to have its own Office of Counsel; and the OIG was violating its Memorandum of Understanding (MOU) with the HUD Office of General Counsel. The first and second issues were eventually dropped, based on the OIG's providing overwhelming evidence to the contrary. My efforts to find out how the OIG was violating its MOU with the Office of General Counsel were to no avail. Finally, when the permanent General Counsel was appointed, she said there was no issue.
- In June 1997, I was asked to meet with the Deputy Secretary about OIG public affairs. At the meeting, which was attended by the Deputy Secretary and key aides to the Secretary, I was given and asked to agree to a memorandum from the Deputy Secretary directing me to follow a HUD-

dictated public affairs protocol. The memorandum also alleged that the OIG was disseminating confidential information.

I refused to agree to the protocol, and key aides to the Secretary subsequently directed the highest ranking career attorney in HUD's Office of General Counsel to sign a referral to the Integrity Committee of the PCIE. The referral essentially alleged that I was insubordinate and that the OIG was disseminating confidential information. This referral was eventually withdrawn, through the good offices of Ed DeSeve as OMB's Controller and also due to the prospect of a Washington Post article.

My efforts to determine what confidential information the OIG was disseminating proved fruitless. The Secretary finally told me that I was better off not knowing the specifics; they were too specific and negative, and they involved my immediate office.

The Deputy Secretary subsequently told me that his role in this matter had been limited to signing the initial memorandum, at the direction of a key aide to the Secretary.

- During this period from January 1997 to the summer of 1997, the Secretary repeatedly assured me that he had nothing to do with these actions by his key aides. He explained to me that his key aides saw me as the "embodiment of evil," and there was nothing he could do about that. I suggested that, if his key aides were acting without his approval, he should fire them; the Secretary did not respond.
- In June and July 1997, the Secretary announced the establishment of an Enforcement Center headed by a Federal Bureau of Investigation (FBI) agent on detail to HUD. The Secretary's public statements and the presence of the FBI agent suggested to me that the Enforcement Center might be charged with criminal investigations/referrals, in addition to civil and administrative enforcement matters. I objected on the grounds that such a course of action would undermine the intent of the IG Act to consolidate the criminal investigation and referral process within the OIG. The Secretary finally agreed, in light of my objections, to stipulate that the Enforcement Center would not conduct criminal investigations.

Within the last two months, Enforcement Center staff have relayed to me the Secretary's insistence that any MOU between the OIG and the Enforcement Center state the Secretary's right to conduct criminal investigations. While the IG Act is not determinant in this area, another statute

is. I have provided the Secretary with a legal analysis demonstrating that he does not have authority to conduct criminal investigations unless specifically provided with such authority by statute. I am submitting a copy of this legal analysis for the record of this hearing.

- In August 1997, I became aware that a reporter for a professional newspaper was preparing a story about the HUD Inspector General, and that he had been provided with both the April 1997 anonymous letter and the referral to the PCIE by HUD's Office of General Counsel of the allegations that I was insubordinate and the OIG was disseminating confidential information. I advised the Secretary of the publication's interest and of my concern that persons under his control had released these confidential documents to the news media. The Secretary initially assured me that his staff had not done so, but later indicated that he had reprimanded them in connection with this matter.
- In September 1997, personnel in HUD's Budget Office advised me that the Secretary had cut the OIG's 1999 budget request by \$10 million. The purpose of the cut was to reduce funding for Operation Safe Home. When the OIG appealed the cut, the Secretary called the Deputy IG to ask why the OIG had made a written appeal, since the Secretary didn't know anything about a cut in the OIG's request. The OIG request was then submitted to OMB without change.

In September 1998, the OIG has just been advised by personnel in HUD's budget office that the Secretary has cut the OIG's 2000 budget request by \$15 million. The budget personnel were not aware of the reason for the cut.

- The IG Act requires that the OIGs' semiannual reports to the Congress be transmitted by the agency heads. The HUD OIGs' last two semiannual reports to the Congress (as of September 30, 1997 and March 31, 1998) have instead been transmitted by the Deputy Secretary. The only explanation I have received for this is that a key aide to the Secretary allegedly said the reports did not rise to the level of significance warranting the Secretary's signature.
- The Veterans Affairs, HUD and Independent Agencies Appropriations Bill for 1998 provided the HUD OIG an additional \$9 million to undertake an aggressive anti-fraud initiative in selected cities. We used an elaborate screening process to identify the cities where this initiative could be best piloted. Based on this screening process, the top candidates were Baltimore, New Orleans, and the San Francisco Housing Authority.

While the selection of the cities had nothing to do with the identities of the Mayors, I realized, of course, that the Mayors in these three cities were African-American, and there could therefore be a perception problem. I consulted with the Secretary about this well before any selection announcement was made. The Secretary said he wouldn't expect any problems with Baltimore or New Orleans. But San Francisco could be a problem, he said, because everything in San Francisco is perceived in racial terms. I said we needed to look at the San Francisco Housing Authority, but didn't otherwise have enough staff to do it right. He responded, well, you'll just have to go forward.

On May 20, 1998, the Los Angeles Times reported that "HUD Secretary Andrew Cuomo had no role in choosing the targeted cities and complained that cities with black Democratic mayors were unfairly singled out for examination. 'This is in our opinion either illegal or unethical,' Cuomo said in an interview. 'It is not a situation that can or should be tolerated.'"

- In February 1998, the Secretary advised me to take care in reporting on HUD 2020 in the OIG's semiannual report to the Congress as of March 31, 1998. He said that he was having HUD 2020 evaluated by Booz Allen, David Osborne, and James Champey, and their reviews would be very positive. The Secretary said he didn't want me to be humiliated by filing a report at odds with theirs.

The Secretary in fact spent \$412,000 contracting for reviews of HUD 2020 by Booz Allen, David Osborne, and others. The reviews were positive.

- In March 1998, a reporter from the Wall Street Journal called to say that he was writing an expose based on an OIG review of OIG financial operations. Over the next days I learned that copies of this January 1998 review and an accompanying 5-page "highlights" paper allegedly prepared by "HUD officials" had been distributed to certain Members of Congress, the media, and the Baltimore Housing Authority.

In June 1997, in part due to allegations in the April 1997 anonymous letter to Secretary Cuomo, I had instructed OIG financial auditors to undertake a financial review of the OIG. I told them to be as nitpicking as possible--the OIG, after all, needs to be above reproach. The auditors looked at \$22 million in OIG salary and expense expenditures and questioned \$4,000, which represented an agency expenditure that had been erroneously charged to the OIG. The auditors also looked at \$900,000 in Operation Safe Home expenditures and questioned \$750, the cost of an anti-drug training

course that should have been charged to OIG salary and expense funds rather than to Operation Safe Home operational funds.

The 5-page "highlights" paper apparently translates these and other minimal findings into something quite sensational.

I have not been able to obtain a copy of the "highlights" paper. But, based on media accounts, it alleges, for instance, that the OIG has lost the difference between the amount of Operation Safe Home funds provided (\$7.5 million) and the amount of Safe Home funds expended (\$900,000). Clearly, the preparer of the "highlights" paper either does not understand accounting and auditing, or is deliberately mischaracterizing the OIG financial review. Because of the misinformation in the "highlights" paper, my staff and I have spent a significant amount of time reviewing the actual findings with concerned Members and congressional staff.

- Since July 1998, I have been endeavoring to work with HUD officials to establish an OIG personnel office, instead of relying on the HUD personnel office. The HUD personnel office has been downsized and tends to be overwhelmed by the Secretary's priorities, with the result that OIG vacancy announcements and initial screening of applicants have been delayed for months. On August 13, 1998, HUD's Acting Director of Human Resources told me that he believes the OIG would need the Secretary's approval to establish an OIG personnel office. On August 17, 1998, I provided HUD's General Counsel with a legal analysis of this issue and asked for her concurrence that the OIG does not need the Secretary's approval to establish an OIG personnel office. The General Counsel has not yet responded. I am submitting a copy of the OIG's legal analysis for the record of this hearing.
- In August 1998, I received a copy of a memorandum from a key aide of the Secretary to the Department of Justice. The memorandum proposes an amnesty program for parties engaging in a practice that has been the subject of OIG audit and investigative work for 5 years, and which is currently the subject of litigation brought by a U.S. Attorney's Office. The practice at issue was also previously the subject of "get tough" statements by the Secretary. Based on correspondence subsequently received by the OIG, the key aide's amnesty proposal was based on suggestions to the Secretary by an attorney who in the past has represented a party allegedly engaging in the particular practice. Neither the Secretary nor his key aide has ever discussed the amnesty proposal with me. The OIG has provided the Department of Justice with our objections to the amnesty proposal.

- Over the past weeks, I have been informed by parties outside HUD and the Congress that the Secretary, in negotiations over proposed public housing legislation, has demanded that the OIG's Operation Safe Home anti-violent crime initiative either be terminated or moved to the Department of Justice.

The Operation Safe Home initiative was undertaken more than 4 years ago at the request of Secretary Cisneros, and with the endorsement of Vice President Gore, Attorney General Reno, former Secretary of the Treasury Bentsen, and former Drug Czar Brown. Its purpose is to improve the quality of life for residents in publicly assisted housing by working in a collaborative fashion to eliminate violent crime affecting those residents.

I am told that the Secretary's rationale for terminating or moving Operation Safe Home is that Operation Safe Home is creating a police state in publicly assisted housing. The Secretary's actions in this matter are surprising, to say the least, because he knows better, because he has previously given Operation Safe Home high and public praise, and because he has never once discussed with me his efforts to terminate the initiative or move it outside the OIG.

- Most recently, I have become aware of serious irregularities in the Department's processing of an Equal Employment Opportunity (EEO) complaint, which complaint alleges discrimination on my part against a senior OIG official. The standard investigation, conducted under the auspices of the HUD EEO office, has been halted and a key aide to the Secretary, a Deputy General Counsel, has instead entered into two \$50,000 contracts with prominent law firms.

These contracts, awarded through an emergency procurement action, call for a wide ranging investigation into this EEO complaint, any similar EEO complaints in the OIG, as well as any other, related issues that might arise during the investigation. The Deputy General Counsel, as the Government's Technical Representative, is in complete control of the contractors' work, even to the point of deciding--after being briefed on the contractors' findings--whether a report of investigation will be prepared.

This situation raises issues including conflicts of interest and excessive intrusion into the EEO process. Accordingly, I have asked the Equal Employment Opportunity Commission to assume responsibility for processing the EEO complaint at issue.

On September 2, 1998 I met with the Secretary to tell him his actions with respect to the EEO complaint were wrong. I reminded him that I had previously told him that, if he started the "dirty tricks" again, I would fight. I said that I now intended to fight.

On September 3, 1998, HUD's General Counsel relayed to OIG Counsel a settlement offer from the Secretary. If I would leave HUD, the Secretary would settle the EEO complaint without an admission of discrimination, by meeting the complainant's monetary demands and placing him in a very senior position, perhaps the IG position, within the OIG.

I trust it is clear to you from this saga that the Secretary and his key aides are spending much too much time and energy trying to undermine the OIG; and the Deputy IG, OIG Counsel, and I are spending much too much time and energy trying to defend the independence of the OIG. I have great faith in Government process, but I fear that a significant part of this struggle is taking place outside that arena.

I offer, as an example, a conversation I had with a Member of Congress a couple of months ago. The Member said he had received a report from HUD that, the previous Thursday, I had been in New York City participating in a press conference with the Mayor. The purpose of the press conference was allegedly to vilify two prominent African Americans. In fact, I had been in New York City the previous Thursday, participating in a press conference. But the purpose of the press conference was to announce, along with Police Commissioner Safer and Federal Bureau of Investigations representatives, the success of a collaborative effort to dismantle a drug ring that had been controlling public housing in four of the City's boroughs.

The good news is that, while the Secretary, his top aides, the Deputy IG, OIG Counsel, and I are otherwise occupied, the people of the HUD OIG retain their strong commitment to HUD's mission and the OIG's mission, and they keep moving forward. I refer you to our latest semiannual report to the Congress for a discussion of their significant accomplishments, and I note that many of these accomplishments are based on collaboration and cooperation with HUD program staff. I have great respect for the people of HUD, who have largely refused to follow the Secretary's lead in treating the OIG as an adversary.

S. 2167 and Other Proposals Affecting OIGs

In conversations with the Secretary, I have tried to explain that the HUD OIG operates under a Government-wide law and as a part of a broad community comprised of 56 other IGs. The Secretary has responded that I work in HUD and I am under his

supervision. It seems to me that the Administration and the Congress share an obligation to forcefully advise the Secretary of the appropriate role of the OIG and the appropriate way for the Secretary to deal with the OIG.

To prevent situations like the one at HUD, I would further suggest that these messages need to be communicated to each agency head at the beginning of his/her tenure.

The Committee may also want to consider changing two statutory provisions that the Secretary and his key aides have repeatedly cited as limiting OIG independence.

- Section 3 of the IG Act, as you know, says that the IG reports to and is under the general supervision of the agency head or deputy agency head. Section 3 also says that "Neither the head of the establishment nor the officer next in rank below such head shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation."

The Secretary and his key aides have used an expansive interpretation of the "general supervision" clause to mean, for instance, that the OIG could not have contact with the media except through the HUD Office of Public Affairs. I expect that this clause is also being used as the basis for the Department's position that the OIG cannot establish its own personnel office without the approval of the Secretary.

In contrast, during Secretary Cisneros' tenure, the OIG established its own Office of Counsel without the Department's ever invoking the "general supervision" clause.

- An undetermined number of statutes that grant administrative authorities to executive agencies rely on the definition of independent establishment found in section 105 of title 5, United States Code. My experience is that this definition is typically understood not to include OIGs; and OIGs therefore routinely seek agency head authorization for such things as home-to-work use of Government vehicles assigned to the OIG, OIG employee details, and establishment of OIG imprest funds.

Prior to the current Secretary at HUD, my experience was further that agency heads provided such authorizations sought by OIGs on a perfunctory basis. However, when I sought the current Secretary's approval for home-to-work use of Government vehicles in conjunction with violent crime task force work, he advised me that his Office of General Counsel would be undertaking an inquiry into the merits of

the OIG case. I have since relied on a decision issued by the Court of Appeals for the District of Columbia Circuit and the rationale underlying the IG Act to prevent these incursions on the independence of OIG audit and investigative work.

To prevent this type of problem, I suggest revising section 105 of title 5 to specify that OIGs are included within the definition of independent establishment. Mr. Chairman, I will send you a letter within the next day or so detailing the problem and the proposed statutory change.

I offer the following views on the major provisions of S. 2167, a Bill to amend the Inspector General Act of 1978.

- 9-Year Renewable Term Appointments For IGs. I am not opposed to this provision, nor do I actively support it. If a term appointment would enable some IGs to operate more independently, that would of course be a good thing. On the other hand, I don't believe that a term appointment would in any way ameliorate the situation I am in at HUD. I am also concerned that term appointments could result in keeping IGs in office who are doing less than stellar jobs.
- External Reviews Of OIG Management And Operations Every Three Years, Conducted by GAO, A Disinterested OIG, Or An Appropriate Private Entity. I strongly support the concept of legislatively mandated, regular external reviews of OIG management and operations. We need, once and for all, to conclusively answer the question of who watches the watchdogs.

My recommendation would be to strengthen this section in two ways. First, the mandated scope of the external review should be required to extend into OIG operational performance. Second, if GAO is unwilling to perform all these reviews, we need to look for another mechanism that will be, and will be perceived as being, totally independent. I don't think that a "disinterested" OIG or a private entity contracted for by the OIG being reviewed fits this bill. I would suggest exploring ways to make this a more arms length transaction by, for instance, having GAO, OMB, or the PCIE do the contracting for the entire OIG community.

- Annual (V.s. Semiannual) Reports To The Congress, With Modifications Of The Information To Be Provided. I am in the minority in the OIG community, but I prefer semiannual reporting to the Congress. It is a better means of keeping in touch with the Congress, and it is also a useful exercise for the OIG in terms of compiling and analyzing the results

we are having. I fear that an annual report will be used simply as a reference document.

I support the modifications being made in the reporting requirements, but wonder if they go far enough in meeting the needs of the Congress. Staffers often complain that the OIG semiannual reports are too difficult to read and don't give them the information they want. It might be useful to bring more clarity to the question of what would make the reports more readable and useful.

- Increased IG Salaries (From Executive Level III To Executive level IV). I understand that the purpose of this change would be to increase the stature of the IGs within their agencies. I support that goal.

My principal concern about IG remuneration, however, is that IGs who have previously been in the career Senior Executive Service may choose to retain their right to be rated and granted bonuses by the agency head. I see that as a serious violation of IG independence, and would ask the Committee to consider eliminating the potential for such a problem.

Finally, I note that S. 2167 does not deal with an issue that is critical to the HUD OIG, i.e., statutory law enforcement authority. In March 1998, we prepared a legislative proposal to grant us this authority. Since then, we have been working with the Department of Justice (DOJ) to obtain their endorsement of the proposal. While the discussions with DOJ are on-going, I am attaching a copy of our proposal to alert you to the extreme importance of this issue for the HUD OIG.

Mr. Chairman, Senator Glenn, and Members of the Committee, that concludes my testimony. I thank you again for your leadership and support, and for inviting me to testify today.